



**Legislative
Research
Council**

MINUTES

Regional Watershed Advisory Task Force

**Third Meeting
2013 Interim
September 15 & 16, 2013**

**The Galley Steakhouse, Lounge & Motel
230 U.S. Hwy. 12
Webster, South Dakota**

September 15, 2013

Task Force members present for the tour on Sunday, September 15, 2013, were: Representatives Brian Gosch (Chair), Dennis Feickert, and Spencer Hawley; Senator Jason Frerichs; Messrs. Mike Jaspers, Paul Symens, and George Vandel. Staff members present were Tom Magedanz and David Ortbahn.

Tour of Affected Areas

Task force members toured inundated areas near Bitter Lake, a farm tile drainage project in Grant County, and an area demonstrating elevation changes in eastern South Dakota. The tour began at 3:00 p.m. and ended at 6:30 p.m.

September 16, 2013

The third meeting of the interim Regional Watershed Advisory Task Force was called to order by Representative Brian Gosch, Chair, at 9:00 a.m. (CDT), on Monday, September 16, 2013, at The Galley Steakhouse, Lounge, and Motel, in Webster, South Dakota.

A quorum was determined with the following members present: Representatives Brian Gosch (Chair), Dennis Feickert, and Spencer Hawley; Senator Jason Frerichs; and Ms. Kim Vanneman; and Messrs. Mike Jaspers, Paul Symens, Rick Sommers, and George Vandel. Members excused were: Senators Tom Jones, Russell Olson, and Mike Vehle (Vice Chair); Representative Leslie Heinemann; and Mr. Dennis Duncan. Staff members present included Tom Magedanz, Principal Research Analyst, and David Ortbahn, Principal Research Analyst.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). The committee documents are available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Committee Documents." For the purpose of continuity, these minutes are not necessarily in chronological order.

Minutes

MS. KIM VANNEMAN MOVED, SECONDED BY SENATOR JASON FRERICHs, TO APPROVE THE MINUTES OF JULY 1 AND 2, 2013. The motion prevailed unanimously on a voice vote.

Opening Remarks

Representative Brian Gosch, Chair, welcomed everyone to the meeting. He thanked those who help coordinate and attended the task force's field tour on the afternoon of Sunday, September 15. He reviewed briefly the tour which included stops at Bitter Lake where the current water level is over thirty feet higher than it was in 1984 and at a farm field in Grant County where drainage tile was being installed (**Document 1**).

Nebraska Association of Resources Districts

Mr. Dean Edson, Executive Director, Nebraska Association of Resources Districts, presented a Power Point presentation in which he talked about the history and function of resource districts in Nebraska (**Document 2**). He felt that the resource districts were working well. He also distributed four pamphlets and handouts describing Natural Resources District history and operations (**Documents 3, 4, 5, and 6**).

In 1969, legislation was passed in Nebraska which combined 154 special-purpose districts into 23 multipurpose districts based on river basin boundaries. These districts are responsible for erosion prevention and control; prevention of damages from flood water and sediment; flood control; soil conservation; water supply for beneficial uses; development, management, utilization, and conservation of ground water and surface water; pollution control; solid waste disposal and sanitary drainage; drainage improvement and channel rectification; development and management of fish and wildlife habitat; development and management of recreational and park facilities; and forestry and range management. While all the districts do water management, none of the districts performs all of these responsibilities.

Mr. Edson commented that these districts are governed by a board of seven to twenty-one members who are locally elected from the district at-large or from a subdistrict. Subdistricts have to be created as equally as possible based on population. There are a total of 321 board members statewide. All registered voters within a district or subdistrict are eligible to vote for the board members. Local funding for these districts is by means of property taxes and occupation taxes. A board may levy a property tax of up to 8.5 cents per \$100 of valuation. Of this levy, up to 4.5 cents can be used as a general tax levy; up to 1 cent can be used for groundwater management; and 3 cents for a fully appropriated levy. The average levy in the state is 3.74 cents per \$100 of valuation. A board of a district that has been declared to be fully appropriated can also levy an occupation tax of up to \$10 per acre on irrigated land. The use of this occupation tax is limited to water projects, stream augmentation, and riparian management. Districts can also issue general obligation bonds.

In responding to questions, Mr. Edson said that the districts follow county lines as much as possible and where counties are split they try to follow county roads. They also tried to keep farms and ranches together in the same district. He told the task force that it was initially difficult to reduce the number of districts to 23, but there haven't been major changes in the law since 1969. Mr. Edson also told the task force that tiling of farm land has not been an issue in Nebraska.

Iowa Drainage District Association

Mr. Don Etler, Iowa Drainage District Association, talked to the task force about the drainage laws in Iowa. He commented that South Dakota should have done what Iowa did one hundred years ago regarding drainage laws. Iowa's law has been in effect since 1906. He said that in 1913 the Iowa constitution was amended to give drainage districts condemnation authority. Over six million acres of land were put into drainage districts in the first twenty years. He said there are currently 3,500 drainage districts in Iowa. With land prices spiking in the early 1900s many drainage ditches were constructed and rivers were channelized at that time. Drainage districts now primarily serve to make improvements to and to maintain existing drainage systems.

He said drainage districts are mainly locally funded. A landowner petitions a board to make a drainage improvement. The board goes through a public hearing process. Persons have the option to challenge any decision of a board in state court. Improvements are paid by special assessment of the affected landowners. The costs of the improvement are distributed based on the relative benefits each landowner would receive.

Mr. Etler, in a response to a question, said that drainage districts are watershed based and that a county could be in several different districts and that a farm, also, could be in several different drainage districts. Usually, members of county board of supervisors are appointed by the affected counties to serve as commissioners for a drainage district. Landowners of a drainage district can opt to elect commissioners, but this rarely happens.

Responding to another question he said that there used to be closed drainage basins in Iowa but many of those were eliminated back in the early 1900s. Federal and state laws regarding wetlands have been enacted since then, and now federal and state approval would be necessary before such actions could take place.

He said a typical assessment could be \$500 to \$600 an acre. Payment of that assessment could be divided into as many as twenty installment payments.

He said the state rarely gets involved in drainage issues and has never funded a state drainage coordinator despite attempts to do so in the past.

Minnesota Board of Water and Soil Resources

Mr. Jeff Nielsen, Southern Regional Supervisor, Minnesota Board of Water and Soil Resources, talked to the task force about Minnesota's governance on water management and drainage (**Document 7**). Counties, soil and water conservation districts, and watershed districts all play a role in water and drainage management in Minnesota. He said in 1985 the Legislature gave counties the authority to do a comprehensive water plan and to serve as the local drainage authority. There are 87 counties in the state. County plans, which get a lot of public input in their development, have to get approved by the state. Under the Minnesota law, if a landowner wants to dig a drainage ditch or install a drainage tile system, the landowner must petition the county. The county would review the proposal and assess benefits and determine who pays how much. The county serves as fiscal manager for the improvement.

There can be 20 to 30 projects in a county. Each ditch or tile system has its own funds paid by the landowners. Each county may adopt rules to govern the size of private lines and overall quantity management. There are 91 soil and water conservation districts in the state, which are generally based on county lines. These districts can get involved in the design and installation of drainage systems especially if buffers along ditches, wetland restoration, or surge ponds are determined to be part of a system. There are 46 watershed districts in the state. The boundaries of these districts are based on hydrologic areas. These districts were formed by petition for various reasons including lake water quality management, drainage management, flood control, and storm water quality management. These districts become involved in drainage improvements and in the development of new drainage systems. Counties may transfer their ditch systems to a watershed district for future administration. A watershed district may also establish rules to govern the size of private lines and overall quantity management. He added that, if a watershed district crosses county lines, representatives to the board are appointed from each county. County officials appoint those board members.

Minnesota Association of Watershed Districts

Mr. Jerome Deal, President, Minnesota Association of Watershed Districts, told the task force that the association has oversight of the watershed districts in the state. Mr. Deal distributed a map showing the watershed districts created in Minnesota (**Document 8**). He commented that every watershed is different. Relief at the upper portion of a watershed can result in flooding in lower areas of the watershed. Management of water is important and the key is how it is managed. He commented that drainage laws in Minnesota are over 100 years old. He said there are constant changes and mentioned a study underway at the state level to look at drainage laws and conservation laws. He said the association works with the Legislature regarding water issues. He commented that the process for the redetermination of benefits for drainage projects is one that watershed districts get involved in and this is a costly process. He also commented that counties, soil and water conservation districts, and watershed districts each have their own plans. They are currently working the in state to get these plans combined. Watershed districts are also working to develop water storage areas to help prevent flooding.

Lac Qui Parle – Yellow Bank Watershed District

Mr. Darrel Ellefson, Chair, Lac Qui Parle – Yellow Bank Watershed District, talked to the task force about his watershed district. He told the task force that the watershed district was formed in 1971. Forty-three percent of the water in the district comes from South Dakota. He said drainage ditches in the area were first built in the early 1900s. There are 113 drainage ditches in his county. He said since 1971 the district has handled about 10,000 drainage permits. He said that there is pattern tiling going into ditches in the district which he believes will reduce flooding. He also commented that in the early 1900s drainage was also done for disease control.

Ms. Trudy Hastad, Administrator, Lac Qui Parle – Yellow Bank Watershed District, added that the district involves three counties. She briefly explained the permit process. A landowner has to get a permit to install a drainage ditch or drainage tile. The landowner has to get

downstream approval and payments to downstream districts may be involved. Permits are good for one year and are free. Not every watershed district, however, requires permits to drain water. Permits can be protested and there is an appeal process. She distributed the Lac Qui Parle Watershed District's permit application form (**Document 9**).

Red River Basin Commission

Mr. Lance Yohe, Executive Director, Red River Basin Commission, Fargo, North Dakota, discussed the organization, mission, and activities of the Red River Basin Commission and provided a Power Point presentation (**Document 10**). Mr. Yohe discussed the structure of the Red River Basin Commission and noted that it must deal with varying water law in three states (Minnesota, North Dakota, and South Dakota) and one Canadian province (Manitoba). He discussed differences between the member entities in how they pursue water management, types of projects and activities, funding and budgeting methods, permitting, planning, and governmental and district structure. He also discussed varying approaches in the regulation and permitting of drainage activity. He noted that in Manitoba and Canada, budgeting, planning, and permitting are often structured from the top down, as opposed to state and local activities in the U.S. He also noted that water management activity in Minnesota is often addressed along watershed boundaries, while county boundaries are used more frequently in North Dakota. **Mr. George Vandel** asked about the impact of agricultural tile drainage. Mr. Yohe responded that their board is doing a study of tiling impacts in the Moorhead, Minnesota area, but the study is not yet completed. Mr. Yohe also distributed two pamphlets describing the Red River Basin Commission (**Documents 11 and 12**).

North Dakota

Senator Larry Luick, North Dakota State Senate, was involved with changes to North Dakota's drainage law two years ago and discussed North Dakota's drainage and water management laws and practices. Senator Luick is a farmer and tile drainage contractor. He stated that before the 2011 drainage legislation, all requests for local drainage projects had to go through the state, which tended to be slow. The 2011 legislation allowed local drainage boards to approve small drainage projects, while projects larger than eighty acres would need a state permit. There were attempts in the 2013 legislative session to reduce the number of acres for projects needing a state permit, but these efforts were defeated and the threshold remains at eighty acres. Senator Luick supports tiling and feels that it increases productivity, but favors providing for some form of management and control over tiling water. He recognizes other issues such as salinity, nitrates, and wetlands. He sees the need for more management and control over drainage activity and is not in favor of allowing people to abandon the farm program in order to drain wetlands. **Senator Frerichs** asked whether NRCS intends to update its wetlands maps to identify wetlands that are being farmed. Senator Luick answered that there is an effort to use new information and new technology to identify wetlands. **Representative Gosch** asked how much state funding goes into management efforts for North Dakota's water management entities and districts and how the state is involved in the permitting process and permitting forms and procedures. Senator Luick replied that the state has a uniform permit application form, which he feels works well. He believes that drainage questions should be handled on a watershed basis.

Public Testimony

Mr. Edward Artz, Humboldt, distributed written testimony on behalf of himself (**Document 13**) and his neighbor, **Mr. Marvin Van Gendren (Document 14)**. Mr. Artz, who farms in Aurora County, said that his land was flooded from 1993-1998 and again in 2010-2012 and that he has never had this type of flooding before. He attributes the additional flooding to more grassland being farmed and more runoff. He said that his flooded land is taxed and that he would like to have a district created to drain flooded water. **Representative Spencer Hawley** asked how many acres of Mr. Artz's land are flooded. Mr. Artz replied that 160 acres were flooded with seventy acres left for grazing.

Mr. Richard Nissen, Vermillion, discussed flooding and erosion problems in his area and said that a dam was built to address some of the problem. He stated that he likes Nebraska's Natural Resource District system.

Mr. Tom Bizek, New Effington, a township supervisor in Roberts County, said that the Prairie Pothole region has had increasing amounts of water in recent years resulting in flooding and closed roads. He said that the potholes in previous years have served as reservoirs but are now all on the verge of overtopping. He said there needs to be a way to make the potholes reservoirs again, rather than overtopping.

Ms. Linda Simmons, Twin Brooks, said that South Dakota must learn from other states and that sometimes the most expensive course is to just let things go because they are not yet a problem. She said that South Dakota is at a disadvantage because we do not have as much research and data available as other areas and that it may be necessary to revise our tax system to address some of these issues. She said that she is unsure about the impacts of drain tiling, but it is necessary to find ways of preventing or dealing with drainage conflicts.

Mr. Steve Owen, Henry, stated that tiling doesn't necessarily increase water in a watershed and tiling may increase or decrease flooding. **Representative Gosch** asked whether Mr. Owen had any possible solutions for water problems in South Dakota. Mr. Owen responded that we have been in a wet cycle over the last twenty years, and he feels that tiling has helped to control or reduce flooding and also helps water quality by filtering some materials into the soil rather than having them wash away as runoff. He said that tiling needs to be done in a responsible way. **Representative Dennis Feickert** asked whether tiling should be subject to a permit process and whether a permit system is necessary. Mr. Owen answered that it depends on the situation and on the local entities involved.

Mr. Gary Zubke, Milbank, stated that counties should regulate drainage, but that in some counties the state's attorney has been advising that the county should not be involved. He feels that tiling is necessary as a way of helping to control flooding events.

Mr. Roy Gjerde, Vienna, discussed Dry Lake #2 in Clark County. He said that there has been a lot of tiling and drainage into the lake but the lake level has been going down.

Mr. Jim Hundstad, Bath, former task force member, said that he is both prodrainage and proflood control, but the problem is how to do it. He said that some sort of control or penalty

needs to be in place because if something is not done there may be retaliation between individuals. Someone needs to manage the situation so people do not take matters into their own hands. He said it is not necessary to know all the details before getting started or to reinvent the wheel. The task force needs to discuss among themselves what to do next and then take action.

Mr. Franklin Olson, Pierpont, stated that we have the capacity in rivers and creeks to move the water if we use water management properly.

Ms. Karen Cameron-Howell, Volga, said that it is helpful to review procedures used in other states. South Dakota has drainage law in place, but it may need to be revised somewhat. Current drainage facilities and ditches need to be cleaned and maintained. She said that a lot of drainage was put in place in eastern South Dakota over the years but people do not know about it or know its location. She stated that she is involved in doing wetlands determinations and that wetlands are sometimes not found on NRCS or USFW maps.

Mr. Bob Whitmyre, Webster, discussed the large amount of water and flooding in Day County and said that 147,000 new acres of land are in tax abatement in Day County. **Representative Gosch** asked whether he could suggest any solutions to the problem. Mr. Whitmyre stated that we are leaving these lakes full and they overflow with additional moisture. He feels there are opportunities for projects to reduce lake levels to provide some storage capacity for potential flooding.

Task Force Discussion

The task force briefly discussed the location and time for the next task force meeting. It was suggested that the next meeting be held in Pierre in December around the time of the Governor's budget address.

Mr. Vandel said that it has been good to hear from other states and that it is time to consider what the task force's next steps will be.

Representative Gosch stated that it is necessary to look at specific situations and the needs that apply in each case, such as inundation at Bitter Lake and similar lakes, and retention ponds to prevent drainage to roads and other infrastructure.

Mr. Rick Sommers said that South Dakota statutes already provide for the formation of various types of water districts; the problems come with the need for funding and the expense involved with forming a district. It would be helpful to have an easier way to form districts and a way to spread and share costs. He said there is also a need for resources that districts and project sponsors can consult before a project is built and before a dispute arises. The current system is essentially a free-for-all with the court system being the only recourse.

Mr. Mike Jaspers said that many areas in northeastern South Dakota need relief. He said it is necessary to somehow provide for flood storage capacity and that lake water levels set by the Water Management Board relating to vested water rights should be reviewed.

Representative Hawley recommended that the task force use the five concepts that were presented at the July meeting in Aberdeen as a framework for discussion at the next meeting.

Representative Gosch suggested looking at a system for standard disclosure of new projects and also looking at the South Dakota One-Call program as it might relate to drainage and water projects.

Representative Feickert stated that he had served twenty years as a Brown County commissioner. He discussed the drainage authority and responsibilities that counties have under current state law and said that some states attorneys have been advising their counties to not be involved with drainage activity.

Ms. Vanneman said that management of water and drainage activity should be at the local rather than state level. There should be a uniform governing framework statewide but operated under local control. She noted that cost is another factor, but the issues are important.

Mr. Paul Symens asked about the scope of the task force's activity. Representative Gosch answered that SB 169 from the 2012 legislative session, which established the task force, assigned the task force a broad range of topics relating to water management and drainage. Senator Frerichs said that these issues involve a broad variety of people, and needs and there is a need for balance among competing groups and interests.

Adjournment

MS. VANNEMAN MOVED, SECONDED BY REPRESENTATIVE FEICKERT, THAT THE MEETING BE ADJOURNED. Motion prevailed on a voice vote.

The chair adjourned the meeting at 3:40 pm.



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